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FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 14-08]

RIN: 3072-AC56

Procedure for Public Notification of Ocean Transportation Intermediary Licensing Activity

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; confirmation of effective date and response to public comment.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is confirming the effective date of the direct final rule published on July 24, 2014, and responds to the comment received. The rule changes the method the Commission uses to provide public notice of Ocean Transportation Intermediary (OTI) license applications, revocations and suspensions by publishing this information on the FMC's official public website rather than publishing the same information in the *Federal Register*. This change provides more timely public notification of official FMC action on OTI licensing matters, simplifies the Commission's business processes, and reduces agency administrative costs.

DATES: The direct final rule published July 24, 2014, at 79 FR 42986, is effective on September 22, 2014.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

While not statutorily mandated, current Commission rules require *Federal Register* (FR) notice for both OTI license applications, 46 CFR 515.12, and revocation or suspension of OTI licenses, 46 CFR 515.16. The Commission has historically used the FR to provide public notice of OTI licensing activity long before the emergence and wide-spread use of the internet and before courts began to often treat information on official government websites as proper items for judicial notice.

Section 19(c) of the Shipping Act, 46 U.S.C. 40903, requires that notice be provided prior to suspension or revocation of an OTI license. The Administrative Procedures Act (APA), 5 U.S.C. 558, provides that an agency must, when acting to withdraw, or annul a license required by law, provide notice in writing of (1) the facts or conduct warranting the action, and (2) opportunity for the licensee to demonstrate compliance with the law. Neither the APA, nor the Freedom of Information Act, 5 U.S.C. §552(a)(1)(A), specify that notice must be published in the FR. Nonetheless, current Commission rules require FR notice for both OTI license applications, 46 CFR 515.12, and revocation or suspension of OTI licenses, 46 CFR 515.12.

Consequently, in the direct final rule published July 24, 2014 (79 FR 42986) the Commission amended its regulations to change the method by which it provides notice of OTI licensing matters by publishing the information it currently publishes in the FR on the FMC's public website.

The Commission received one comment to the direct final rule from UPS Ocean Freight Services, Inc., a licensed non-vessel-operating common carrier (NVOCC); UPS Europe SPRL, a registered foreign NVOCC; UPS Asia Group Pte. Ltd., a registered foreign NVOCC; and UPS Supply Chain Solutions, Inc., a licensed freight forwarder (collectively “UPS”).

UPS voiced concern that adoption of the direct final rule and “. . . reliance solely on a website, without the formal record and archiving functions of Federal Register notices, places the general shipping public, and licensed or registered OTIs in particular, at risk when making or accepting ocean freight bookings with shipper OTIs.” UPS noted the Shipping Act requirements contained in 46 U.S.C 41104(11) and (12) as well as the Commission’s regulations that prohibit accepting cargo for transport, entering into a service contract, or entering into arrangements with an unlicensed person. In this regard, UPS raised concern about reliance on the “current [FMC] website OTI listing” and noted that it does not appear to be a resource like the FR that can be researched to determine the exact date on which the Commission took action with respect to the status of an OTI. UPS is concerned that “if a carrier or forwarder is challenged by the Commission staff with respect to the lawfulness of a particular booking accepted from a shipper OTI, the exact date of such shipper OTI’s licensing or disqualification can be established with reference to a source of which judicial notice will be taken.”

The Commission appreciates UPS’s comments and concerns and addresses those concerns by clarifying the effect of the proposed rule. UPS’s comments suggest that they believe adoption of this change will result in replacing the OTI licensing information the Commission has historically published in the FR solely with the information maintained and listed on the Commission’s Ocean Transportation Intermediaries (OTI) List at <http://www2.fmc.gov/oti/>. This is not the Commission’s intention.

In changing its publication method from FR publication to website publication pursuant to the direct final rule, the Commission plans to create a new, dedicated webpage where it will continue to publish the same OTI licensing information that it has

historically published in the FR, i.e., date of application, license number, applicant name, applicant address, type of application, date of revocation, and reason for revocation. The Commission will also create new webpages to archive older OTI licensing activity postings for easy reference and historical research so the public and particularly carriers and OTIs can determine the exact, official date the Commission took an action with respect to the licensing status of an OTI. Therefore, the same OTI licensing activity information that the Commission historically published in the FR will now be published and searchable on the FMC's public website including archived postings.

The Commission acknowledges that courts take judicial notice of documents published in the FR with ease. Information on official government websites has often been treated as proper content for judicial notice because the nature of the material posted lends itself to meeting the requirements under Federal Rule of Evidence 201(b). *Paralyzed Veterans of Am. v. McPherson*, 2008 U.S. Dist. LEXIS 69542, at *16-17 (N.D. Cal. 2008).

After careful review and consideration of UPS's comment submitted in response to the direct final rule, the Commission has determined that no further rulemaking action is necessary. Therefore, the direct final rule published July 24, 2014 (79 FR 42986) will become effective as scheduled on September 22, 2014.

By the Commission.

Karen V. Gregory
Secretary

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